

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs April 2, 2007¹

DANA NICHOLLE GRAHAM v. CHRISTOPHER CURTIS

**Appeal from the Circuit Court for Davidson County
No. 94-D-906 Carol Soloman, Judge**

No. M2005-02540-COA-R3-CV - Filed on April 20, 2007

Dana Nicholle Graham (“Mother”) and Christopher Curtis (“Father”) were divorced by the Davidson County Circuit Court which, among other things, designated Mother as the primary residential parent of the parties’ minor son. Several years later, Mother filed a request pursuant to Tenn. Code Ann. § 36-5-3001 *et seq.*, seeking to have the case transferred to the Hamilton County Circuit Court because Mother and the child had lived in Hamilton County for more than six months and because Father no longer lived in Davidson County. The Trial Court denied the request to transfer because, in the Trial Court’s opinion, Mother was “forum shopping.” Mother appeals claiming the Trial Court erred in not granting her request for transfer. We agree with Mother and reverse the judgment of the Trial Court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the
Circuit Court Reversed; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

Clifton B. Sobel, Jr., Nashville, Tennessee, for the Appellant, Dana Nicholle Graham.

J. Todd Faulkner, Nashville, Tennessee, for the Appellee, Christopher Curtis.

¹ This appeal was assigned to this panel on April 2, 2007.

OPINION

Background

The sole issue on appeal is whether the Trial Court improperly refused to transfer this case from Davidson County to Hamilton County pursuant to the provisions of Tenn. Code Ann. § 36-5-3001 (2005), *et seq.*

Mother and Father have one child, a son born in Davidson County and who currently is twelve years old. Mother and Father were residents of Davidson County at the time of their divorce which was granted by the Davidson County Circuit Court. According to an affidavit filed by Mother:

[The child] has at all times, since the entry of Final Decree, lived with me, and in July of 1999, we moved from Bradley County, Tennessee, to Hamilton County, Tennessee, where we have since resided.

In January of 2005, Mother filed a request for transfer pursuant to Tenn. Code Ann. § 36-5-3003 (2005). In this petition, Mother stated:

1. Neither the child, the custodial parent nor the non-custodial parent resides in Davidson County, Tennessee, and that the child currently resides in Hamilton County, Tennessee and the child has resided in Hamilton County, Tennessee for at least six (6) months.

2. The issuing Court's Docket Number of the case to be transferred is 94-D-906.

3. The name of the other party is CHRISTOPHER DWAYNE CURTIS. His address is ... [in Cheatham County,] Tennessee ... and his social security number is

4. The name of the Court and address of the Clerk of the Court to whom the case is to be transferred is Circuit Court Clerk of Hamilton County, Tennessee, 500 Courthouse Chattanooga, TN 37402.

5. The name and address of the obligor parent's employer is ... Nashville, TN 37209.

6. The request for transfer can be contested by the non-requesting Party within fifteen (15) days of the date the notice was

mailed by filing a Motion for Review of the Request in the transferor county.

7. A copy of the request with the information in subdivisions (1) - (6) has been mailed to the non-requesting party.²

Father responded to the request for transfer, claiming the request should be denied. Father admitted that he no longer lived in Davidson County and that neither Mother nor the parties' child lived in Davidson County. Father also stated, *inter alia*:

There is no compelling reason to remove this cause from the jurisdiction of this Court. That the mother removed herself from the jurisdiction of this Court of her own free will and choice, taking the minor child with her. That she is now employed with the Sheriff's Office for Hamilton County. That within recent months, she has been found to be in contempt of the Orders of this Court on more than one occasion. She has previously petitioned this Court to remove this case to Bradley County ... and that petition was refused. That this Request for Transfer ... is not timely in light of the [past refusal to transfer the case to Bradley County], is frivolous and constitutes harassment. Therefore the father holds that the Request for Transfer should be denied and he should be awarded his reasonable attorney fees....

A hearing was held on October 14, 2005, following which the Trial Court entered an order stating:

This cause came on to be heard on Friday, October 14, 2005 ... upon the application of [Mother] to remove this cause from Davidson County, Tennessee to Hamilton County, Tennessee pursuant to T.C.A. § 36-5-3001, ... the objection filed thereto by [Father] and from all of which the Court is of the opinion that [Mother] is forum shopping, the motion is not well taken and therefore should be denied....

Mother appeals claiming the Trial Court did not have the discretion to deny her request to have the case transferred to Hamilton County and the judgment of the Trial Court should, therefore, be reversed.

² This Court has intentionally omitted Father's street address, his social security number, and the name and street address of his employer as this information is not necessary to our resolution of this appeal.

Discussion

The factual findings of the Trial Court are accorded a presumption of correctness, and we will not overturn those factual findings unless the evidence preponderates against them. *See* Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). With respect to legal issues, our review is conducted “under a pure *de novo* standard of review, according no deference to the conclusions of law made by the lower courts.” *Southern Constructors, Inc. v. Loudon County Bd. Of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

The pertinent statutes are Tenn. Code Ann. §§ 36-5-3003 and 36-5-3004. These statutes provide, in relevant part, as follows:

§ 36-5-3003. Transfer of support or custody cases. – (a) Except as provided in § 36-5-3001(b), a case that includes child support or custody provisions may be transferred between counties in this state without the need for any additional filing by the party seeking transfer, and without service of process upon the non-requesting party, by the filing of a request by the requesting party as set forth herein.

(b) Upon receipt of a request, the case *must be transferred by the clerk of the issuing court*, without order of the court, to a court of competent jurisdiction in the county where the child or children reside *if each of the following applies*:

(1) Neither the child or children, custodial parent/obligee, nor the non-custodial parent/obligor currently reside in the issuing county; and

(2) The child or children who are subject to the support or custody order currently reside in the county to which the case is to be transferred and have resided there for at least six (6) months. (emphasis added)³

* * *

³ The statute formerly provided that cases “may” be transferred and that language was interpreted by this Court as being permissive, as opposed to mandatory. *See Anderton v. Amari*, No. M1999-01145-COA-R3-CV, 2000 WL 827947 (Tenn. Ct. App. June 27, 2000). However, the language was changed by the General Assembly from “may” to “must” by 2000 Pub. Acts Chap. 922, at p. 2734. Therefore, *Anderton* has no precedential value on this particular issue.

§ 36-5-3004. Procedure to transfer case. – *A case must⁴ be transferred* by the clerk of the issuing court following a request by a requesting party sending the request for the transfer to the clerk of the transferor court. The request shall include the following information:

(1)(A) A sworn statement by the party ... that, to the best of the requesting party's ... knowledge, neither the child or children, the custodial parent/obligee nor the non-custodial parent/obligor resides in the transferor county, and that the child or children currently reside in the transferee county and the child or children have resided in the transferee county for at least six (6) months;

* * *

(2) The issuing court's docket number of the case to be transferred;

(3) The name of the other party and, if known, the other party's address and social security number;

(4) The name of the court and address of the clerk of the court to whom the case is to be transferred;

(5) The name and address, if known, of the employer of the obligor if the order has been or may be subject to an income assignment;

(6) That the request for transfer can be contested by the nonrequesting party within fifteen (15) days of the date the notice was mailed by filing a motion for review of the request in the transferor court;

(7) Certification by the requesting party ... that a copy of the request with the information in subdivisions (1)-(6) has been mailed to the nonrequesting party; ... (emphasis added)

When a party timely receives a petition for transfer and the child is a resident of Tennessee, then the grounds for contesting the transfer are limited to “whether: (1) One (1) party or the child or children continue to reside in the transferor county; [or] (2) The child or children have resided in the transferee county for at least six (6) months.” *See* Tenn. Code Ann. §§ 36-5-3007(b)(1) and (b)(2)(2005).

⁴ *See* footnote 3, *supra*.

When interpreting statutes, this Court is to give the fullest possible effect to the purpose and intention of the General Assembly as reflected in the statute's language. *See Stewart v. State*, 33 S.W.3d 785, 791 (Tenn. 2000). When the meaning of a statute's language is clear, we must interpret the statute as it is written. *See Kradel v. Piper Indus., Inc.*, 60 S.W.3d 744, 749 (Tenn. 2001).

In order to trigger the provisions of Tenn. Code Ann. § 36-5-3001 *et seq.*, there must be a final order of child support or child custody in existence which a party is seeking to enforce or modify. *See* Tenn. Code Ann. § 36-5-3001 (2005); *Buss-Flinn v. Flinn*, 121 S.W.3d 383, 384-85 (Tenn. Ct. App. 2003). In the present case, the final divorce decree is such an order. Thus, Tenn. Code Ann. § 36-5-3001, *et seq.*, applies and Mother was required to comply with the provisions of Tenn. Code Ann. § 36-5-3004, *supra*, when making her transfer request. As is readily apparent, Mother's request for transfer quoted at length above complies with all of the statutory requirements.

Because Mother complied with the requirements of Tenn. Code Ann. § 36-5-3004, Father's ability to contest the transfer was limited to two particular issues. The controlling statute could not be clearer as it states "[t]he contest of the transfer shall be limited to..." these two narrow issues. Tenn. Code Ann. § 36-5-3007(b). We find it difficult to interpret the General Assembly's intent in using "shall be limited" as anything other than exactly what it says. Specifically, Father could contest the transfer by showing: (1) either of the child's parents or the child still lives in Davidson County, or (2) the child has not lived in Hamilton County for six months. *See* Tenn. Code Ann. § 36-5-3007(b), *supra*. In contesting the transfer, Father did not claim either that he, Mother, or the child still lived in Davidson County, or that the child had not lived in Hamilton County for six months.

Since Mother complied with the statutory requirements and because Father failed to contest the transfer for either one of the two permissible reasons set forth in Tenn. Code Ann. § 36-5-3007(b), the plain language of the statute *required* the Trial Court to grant Mother's request for transfer. Therefore, the judgment of the Trial Court must be reversed. On remand, if Mother and the child still live in Hamilton County, the Trial Court is instructed to transfer this case to Hamilton County and otherwise comply with the provisions of Tenn. Code Ann. § 36-5-3005 titled "Duties of the transferor court."

Conclusion

The judgment of the Trial Court is reversed, and this cause is remanded to the Trial Court for further proceedings consistent with this Opinion and for collection of the costs below. Costs on appeal are taxed to the Appellee, Christopher Curtis.

D. MICHAEL SWINEY, JUDGE